(2) Analysis

Any congressional committee referred to in paragraph (1) may request that the Commercial Operations Advisory Committee provide a report to the committee analyzing the impact of the reorganization and providing any recommendations for modifying the reorganization.

(3) Report

Not later than 1 year after any reorganization referred to in paragraph (1) takes place, the Secretary, in consultation with the Commercial Operations Advisory Committee, shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. Such report shall include an assessment of the impact of, and any suggested modifications to, such reorganization.

(Pub. L. 109–347, title IV, §401, Oct. 13, 2006, 120 Stat. 1921.)

CODIFICATION

Section was enacted as part of the Security and Accountability For Every Port Act of 2006, also known as the SAFE Port Act, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 901 of this title.

SUBCHAPTER II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

PART A—DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION; ACCESS TO INFORMATION

§ 121. Directorate for Information Analysis and Infrastructure Protection

(a) Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection

(1) In general

There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Responsibilities

The Under Secretary shall assist the Secretary in discharging the responsibilities assigned by the Secretary.

(b) Assistant Secretary for Information Analysis; Assistant Secretary for Infrastructure Protection

(1) Assistant Secretary for Information Analysis

There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) Assistant Secretary for Infrastructure Protection

There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) Responsibilities

The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) Discharge of information analysis and infrastructure protection

The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) Responsibilities of Under Secretary

Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

(A) identify and assess the nature and scope of terrorist threats to the homeland;

(B) detect and identify threats of terrorism against the United States; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 122 of this title, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property

record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

(6) To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To administer the Homeland Security Advisory System, including—

(A) exercising primary responsibility for public advisories related to threats to homeland security; and

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this chapter is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this chapter is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) Staff

(1) In general

The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) Private sector analysts

Analysts under this subsection may include analysts from the private sector.

(3) Security clearances

Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) Detail of personnel

(1) In general

In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) Covered agencies

The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Geospatial-Intelligence Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) Cooperative agreements

The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) Basis

The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) Functions transferred

In accordance with subchapter XII of this chapter, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(Pub. L. 107–296, title II, §201, Nov. 25, 2002, 116 Stat. 2145; Pub. L. 108–136, div. A, title IX, §921(g), Nov. 24, 2003, 117 Stat. 1570.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(12), was in the original ''this Act'', meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

The National Security Act of 1947, referred to in subsec. (d)(12)(B), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50, War and National Defense, and Tables.

CODIFICATION

Section is comprised of section 201 of Pub. L. 107–296. Subsec. (h) of section 201 of Pub. L. 107–296 amended section 401a of Title 50, War and National Defense.

AMENDMENTS

2003—Subsec. (f)(2)(E). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

REGULATIONS

Pub. L. 109–295, title V, §550, Oct. 4, 2006, 120 Stat. 1388, provided that:

''(a) No later than six months after the date of enactment of this Act [Oct. 4, 2006], the Secretary of Homeland Security shall issue interim final regulations establishing risk-based performance standards for security of chemical facilities and requiring vulnerability assessments and the development and implementation of site security plans for chemical facilities: *Provided*, That such regulations shall apply to chemical facilities that, in the discretion of the Secretary, present high levels of security risk: *Provided further*, That such regulations shall permit each such facility, in developing and implementing site security plans, to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility: *Provided further*, That the Secretary may not disapprove a site security plan submitted under this section based on the presence or absence of a particular security measure, but the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section: *Provided further*, That the Secretary may approve alternative security programs established by private sector entities, Federal, State, or local authorities, or other applicable laws if the Secretary determines that the requirements of such programs meet the requirements of this section and the interim regulations: *Provided further*, That the Secretary shall review and approve each vulnerability assessment and site security plan required under this section: *Provided further*, That the Secretary shall not apply regulations issued pursuant to this section to facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Public Law 107–295, as amended [see Tables for classification]; Public Water Systems, as defined by section 1401 of the Safe Drinking Water Act, Public Law 93–523, as amended [42 U.S.C. 300f]; Treatment Works as defined in section 212 of the Federal Water Pollution Control Act, Public Law 92–500, as amended [33 U.S.C. 1292]; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.

''(b) Interim regulations issued under this section shall apply until the effective date of interim or final regulations promulgated under other laws that establish requirements and standards referred to in subsection (a) and expressly supersede this section: *Provided*, That the authority provided by this section shall terminate three years after the date of enactment of this Act [Oct. 4, 2006].

''(c) Notwithstanding any other provision of law and subsection (b), information developed under this section, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46, United States Code: *Provided*, That this subsection does not prohibit the sharing of such information, as the Secretary deems appropriate, with State and local government officials possessing the necessary security clearances, including law enforcement officials and first responders, for the purpose of carrying out this section, provided that such information may not be disclosed pursuant to any State or local law: *Provided further*, That in any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this section, and related vulnerability or security information, shall be treated as if the information were classified material.

''(d) Any person who violates an order issued under this section shall be liable for a civil penalty under section 70119(a) of title 46, United States Code: *Provided*, That nothing in this section confers upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this section.

''(e) The Secretary of Homeland Security shall audit and inspect chemical facilities for the purposes of determining compliance with the regulations issued pursuant to this section.

''(f) Nothing in this section shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.

''(g) If the Secretary determines that a chemical facility is not in compliance with this section, the Secretary shall provide the owner or operator with written notification (including a clear explanation of deficiencies in the vulnerability assessment and site security plan) and opportunity for consultation, and issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances: *Provided*, That if the owner or operator continues to be in noncompliance, the Secretary may issue an order for the facility to cease operation, until the owner or operator complies with the order.''

EX. ORD. NO. 13231. CRITICAL INFRASTRUCTURE PROTECTION IN THE INFORMATION AGE

Ex. Ord. No. 13231, Oct. 16, 2001, 66 F.R. 53063, as amended by Ex. Ord. No. 13284, §2, Jan. 23, 2003, 68 F.R. 4075; Ex. Ord. No. 13286, §7, Feb. 28, 2003, 68 F.R. 10620; Ex. Ord. No. 13385, §5, Sept. 29, 2005, 70 F.R. 57990, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure protection of information systems for critical infrastructure, including emergency preparedness communications and the physical assets that support such systems, in the information age, it is hereby ordered as follows:

SECTION 1. *Policy*. The information technology revolution has changed the way business is transacted, government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures. It is the policy of the United States to protect against disruption of the operation of information systems for critical infrastructure and thereby help to protect the people, economy, essential human and government services, and national security of the United States, and to ensure that any disruptions that occur are infrequent, of minimal duration, and manageable, and cause the least damage possible. The implementation of this policy shall include a voluntary public-private partnership, involving corporate and nongovernmental organizations.

SEC. 2. *Continuing Authorities*. This order does not alter the existing authorities or roles of United States Government departments and agencies. Authorities set forth in 44 U.S.C. chapter 35, and other applicable law, provide senior officials with responsibility for the security of Federal Government information systems.

(a) Executive Branch Information Systems Security. The Director of the Office of Management and Budget (OMB) has the responsibility to develop and oversee the implementation of government-wide policies, principles, standards, and guidelines for the security of information systems that support the executive branch departments and agencies, except those noted in section 2(b) of this order. The Director of OMB shall advise the President and the appropriate department or agency head when there is a critical deficiency in the security practices within the purview of this section in an executive branch department or agency.

(b) National Security Information Systems. The Secretary of Defense and the Director of Central Intelligence (DCI) shall have responsibility to oversee, develop, and ensure implementation of policies, principles, standards, and guidelines for the security of information systems that support the operations under their respective control. In consultation with the Assistant to the President for National Security Affairs and the affected departments and agencies, the Secretary of Defense and the DCI shall develop policies, principles, standards, and guidelines for the security of national security information systems that support the operations of other executive branch departments and agencies with national security information.

(i) Policies, principles, standards, and guidelines developed under this subsection may require more stringent protection than those developed in accordance with section 2(a) of this order.

(ii) The Assistant to the President for National Security Affairs shall advise the President and the appropriate department or agency when there is a critical deficiency in the security practices of a department or agency within the purview of this section.

(iii) National Security Systems. The National Security Telecommunications and Information Systems Security Committee, as established by and consistent with NSD–42 and chaired by the Department of Defense, shall be designated as the ''Committee on National Security Systems.''

(c) Additional Responsibilities. The heads of executive branch departments and agencies are responsible and accountable for providing and maintaining adequate levels of security for information systems, including emergency preparedness communications systems, for programs under their control. Heads of such departments and agencies shall ensure the development and, within available appropriations, funding of programs that adequately address these mission systems, especially those critical systems that support the national security and other essential government programs. Additionally, security should enable, and not unnecessarily impede, department and agency business operations.

SEC. 3. *The National Infrastructure Advisory Council*. The National Infrastructure Advisory Council (NIAC), established on October 16, 2001, shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

(a) Membership. The NIAC shall be composed of not more than 30 members appointed by the President, taking appropriate account of the benefits of having members (i) from the private sector, including but not limited to banking and finance, transportation, energy,

communications, and emergency services organizations and institutions of higher learning, and State, local, and tribal governments, (ii) with senior leadership responsibilities for the reliability and availability, which include security, of the critical infrastructure and key resource sectors, (iii) with expertise relevant to the functions of the NIAC, and (iv) with experience equivalent to that of a chief executive of an organization. Unless otherwise determined by the President, no full-time officer or employee of the executive branch shall be appointed to serve as a member of the NIAC. The President shall designate from among the members of the NIAC a Chair and a Vice Chair, who shall perform the functions of the Chair if the Chair is absent, disabled, or in the instance of a vacancy in the Chair.

(b) Functions of the NIAC. The NIAC shall meet periodically to:

(i) enhance the partnership of the public and private sectors in protecting critical infrastructures and their information systems and provide reports on this issue to the President through the Secretary of Homeland Security, as appropriate;

(ii) propose and develop ways to encourage private industry to perform periodic risk assessments;

(iii) monitor the development and operations of private sector coordinating councils and their information sharing mechanisms and provide recommendations to the President through the Secretary of Homeland Security on how these organizations can best foster improved cooperation among the sectors, the Department of Homeland Security, and other Federal Government entities;

(iv) report to the President through the Secretary of Homeland Security, who shall ensure appropriate coordination with the Assistant to the President for Homeland Security and Counterterrorism, the Assistant to the President for Economic Policy, and the Assistant to the President for National Security Affairs under the terms of this order; and

(v) advise sector specific agencies with critical infrastructure responsibilities to include issues pertaining to sector and government coordinating councils and their information sharing mechanisms.

(c) Administration of the NIAC.

(i) The NIAC may hold hearings, conduct inquiries, and establish subcommittees, as appropriate.

(ii) Upon request of the Chair, and to the extent permitted by law, the heads of the executive departments and agencies shall provide the NIAC with information and advice relating to its functions.

(iii) Senior Federal Government officials may participate in the meetings of the NIAC, as appropriate.

(iv) Members shall serve without compensation for their work on the NIAC. However, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Federal Government service (5 U.S.C. 5701–5707).

(v) To the extent permitted by law and subject to the availability of appropriations, the Department of Homeland Security shall provide the NIAC with administrative services, staff, and other support services, and such funds as may be necessary for the performance of the NIAC's functions.

SEC. 4. *Judicial Review*. This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EXTENSION OF TERM OF NATIONAL INFRASTRUCTURE ADVISORY COUNCIL

Term of the National Infrastructure Advisory Council extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organizations and Employees.

Term of the National Infrastructure Advisory Council extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

EX. ORD. NO. 13284. AMENDMENT OF EXECUTIVE ORDERS, AND OTHER ACTIONS, IN CONNECTION WITH THE ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY

Ex. Ord. No. 13284, Jan. 23, 2003, 68 F.R. 4075, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (Public Law 107–296) [see Tables for classification], and the National Security Act of 1947, as amended (50 U.S.C. 401 *et seq.*), and in order to reflect responsibilities vested in the Secretary of Homeland Security and take other actions in connection with the establishment of the Department of Homeland Security, it is hereby ordered as follows:

SECTION 1. [Amended Ex. Ord. No. 13234.]

SEC. 2. [Amended Ex. Ord. No. 13231, set out above.]

SEC. 3. Executive Order 13228 of October 8, 2001 (''Establishing the Office of Homeland Security and the Homeland Security Council'') [50 U.S.C. 402 note], is amended by inserting ''the Secretary of Homeland Security,'' after ''the Secretary of Transportation,'' in section 5(b). Further, during the period from January 24, 2003, until March 1, 2003, the Secretary of Homeland Security shall have the responsibility for coordinating the domestic response efforts otherwise assigned to the Assistant to the President for Homeland Security pursuant to section 3(g) of Executive Order 13228.

SEC. 4. [Amended Ex. Ord. No. 13224, set out as a note under section 1701 of Title 50, War and National Defense.]

SEC. 5. [Amended Ex. Ord. No. 13151, set out as a note under section 5195 of Title 42, The Public Health and Welfare.]

SEC. 6. [Amended Ex. Ord. No. 13122, set out as a note under section 3121 of Title 42, The Public Health and Welfare.]

SEC. 7. [Amended Ex. Ord. No. 13048, set out as a note under section 501 of Title 31, Money and Finance.]

SEC. 8. [Amended Ex. Ord. No. 12992, set out as a note under section 1708 of Title 21, Food and Drugs.]

SEC. 9. [Amended Ex. Ord. No. 12881, set out as a note under section 6601 of Title 42, The Public Health and Welfare.]

SEC. 10. [Amended Ex. Ord. No. 12859, set out as a note preceding section 101 of Title 3, The President.]

SEC. 11. [Amended Ex. Ord. No. 12590, set out as a note under former section 1201 of Title 21, Food and Drugs.]

SEC. 12. [Amended Ex. Ord. No. 12260, set out as a note under section 2511 of Title 19, Customs Duties.]

SEC. 13. [Amended Ex. Ord. No. 11958, set out as a note under section 2751 of Title 22, Foreign Relations and Intercourse.]

SEC. 14. [Amended Ex. Ord. No. 11423, set out as a note under section 301 of Title 3, The President.]

SEC. 15. [Amended Ex. Ord. No. 10865, set out as a note under section 435 of Title 50, War and National Defense.]

SEC. 16. [Amended Ex. Ord. No. 13011, set out as a note under section 11101 of Title 40, Public Buildings, Property, and Works.]

SEC. 17. Those elements of the Department of Homeland Security that are supervised by the Department's Under Secretary for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, with the exception of those functions that involve no analysis of foreign intelligence information, are designated as elements of the Intelligence Community under section 201(h) of the Homeland Security Act of 2002 [Pub. L. 107–296, amending 50 U.S.C. 401a] and section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a[(4)]).

SEC. 18. [Amended Ex. Ord. No. 12333, set out as a note under section 401 of title 50, War and National Defense.]

SEC. 19. *Functions of Certain Officials in the Department of Homeland Security*.

The Secretary of Homeland Security, the Deputy Secretary of Homeland Security, the Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, and the Assistant Secretary for Information Analysis, Department of Homeland Security, each shall be considered a ''Senior Official of the Intelligence Community'' for purposes of Executive Order 12333 [50 U.S.C. 401 note], and all other relevant authorities, and shall:

(a) recognize and give effect to all current clearances for access to classified information held by those who become employees of the Department of Homeland Security by operation of law pursuant to the Homeland Security Act of 2002 or by Presidential appointment;

(b) recognize and give effect to all current clearances for access to classified information held by those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities;

(c) make all clearance and access determinations pursuant to Executive Order 12968 of August 2, 1995 [50 U.S.C. 435 note], or any successor Executive Order, as to employees of, and applicants for employment in, the Department of Homeland Security who do not then hold a current clearance for access to classified information; and

(d) ensure all clearance and access determinations for those in the private sector with whom employees of the Department of Homeland Security may seek to interact in the discharge of their homeland security-related responsibilities are made in accordance with Executive Order 12829 of January 6, 1993 [50 U.S.C. 435 note].

SEC. 20. Pursuant to the provisions of section 1.4 of Executive Order 12958 of April 17, 1995 (''Classified National Security Information'') [50 U.S.C. 435 note], I hereby authorize the Secretary of Homeland Security to classify information originally as ''Top Secret.'' Any delegation of this authority shall be in accordance with section 1.4 of that order or any successor Executive Orders.

SEC. 21. This order shall become effective on January 24, 2003.

SEC. 22. This order does not create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 122. Access to information

(a) In general

(1) Threat and vulnerability information

Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) Other information

The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) Manner of access

Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) Treatment under certain laws

The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) Access to intelligence and other information

(1) Access by elements of Federal Government

Nothing in this subchapter shall preclude any element of the intelligence community (as that term is defined in section 401a(4) of title 50,[1] or any other element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

(2) Sharing of information

The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the

[1] So in original. There probably should be a closing parenthesis after ''50''.

elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

(Pub. L. 107–296, title II, § 202, Nov. 25, 2002, 116 Stat. 2149.)

REFERENCES IN TEXT

The USA PATRIOT Act of 2001, referred to in subsec. (c)(1), is Pub. L. 107–56, Oct. 26, 2001, 115 Stat. 272, known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or the USA PATRIOT Act. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

The Federal Rules of Criminal Procedure, referred to in subsec. (c)(3), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

This subchapter, referred to in subsec. (d)(1), was in the original ''this title'', meaning title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

§ 123. Terrorist travel program

The Secretary of Homeland Security, in consultation with the Director of the National Counterterrorism Center, and consistent with the strategy developed under section 7201,[1] shall establish a program to oversee the implementation of the Department's responsibilities with respect to terrorist travel, including the analysis, coordination, and dissemination of terrorist travel intelligence and operational information—

(1) among appropriate subdivisions of the Department of Homeland Security, including—

(A) the Bureau of Customs and Border Protection;

(B) United States Immigration and Customs Enforcement;

(C) United States Citizenship and Immigration Services;

(D) the Transportation Security Administration; and

(E) any other subdivision, as determined by the Secretary; and

(2) between the Department of Homeland Security and other appropriate Federal agencies.

(Pub. L. 108–458, title VII, § 7215, Dec. 17, 2004, 118 Stat. 3832.)

REFERENCES IN TEXT

Section 7201, referred to in introductory provisions, is section 7201 of Pub. L. 108–458, title VII, Dec. 17, 2004, 118 Stat. 3808, which enacted section 1776 of Title 8, Aliens and Nationality, and enacted provisions set out as notes under section 1776 of Title 8 and sections 403–1 and 404*o* of Title 50, War and National Defense.

CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the 9/11 Commission Implementation Act of 2004, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PART B—CRITICAL INFRASTRUCTURE INFORMATION

§ 131. Definitions

In this part:

(1) Agency

The term ''agency'' has the meaning given it in section 551 of title 5.

(2) Covered Federal agency

The term ''covered Federal agency'' means the Department of Homeland Security.

(3) Critical infrastructure information

The term ''critical infrastructure information'' means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) Critical infrastructure protection program

The term ''critical infrastructure protection program'' means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

[1] See References in Text note below.

(5) Information Sharing and Analysis Organization

The term ''Information Sharing and Analysis Organization'' means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a[1] interference, compromise, or a[2] incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) Protected system

The term ''protected system''—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) Voluntary

(A) In general

The term ''voluntary'', in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) Exclusions

The term ''voluntary''—

(i) in the case of any action brought under the securities laws as is defined in section 78c(a)(47) of title 15—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 78*l*(i) of title 15; and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

(Pub. L. 107–296, title II, § 212, Nov. 25, 2002, 116 Stat. 2150.)

SHORT TITLE

For short title of this part as the ''Critical Infrastructure Information Act of 2002'', see section 211 of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 132. Designation of critical infrastructure protection program

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

(Pub. L. 107–296, title II, § 213, Nov. 25, 2002, 116 Stat. 2152.)

§ 133. Protection of voluntarily shared critical infrastructure information

(a) Protection

(1) In general

Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5 (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this part, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdic-

[1] So in original. Probably should be ''an''.

[2] So in original. The word ''a'' probably should not appear.

tion, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the Government Accountability Office.[1]

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) Express statement

For purposes of paragraph (1), the term ''express statement'', with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: ''This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.''; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) Limitation

No communication of critical infrastructure information to a covered Federal agency made pursuant to this part shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act.

(c) Independently obtained information

Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a) of this section, including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) Treatment of voluntary submittal of information

The voluntary submittal to the Government of information or records that are protected from disclosure by this part shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) Procedures

(1) In general

The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after November 25, 2002.

(2) Elements

The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this part;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) Penalties

Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this part coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

(g) Authority to issue warnings

The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

[1] So in original. The period probably should be a semicolon.

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) Authority to delegate

The President may delegate authority to a critical infrastructure protection program, designated under section 132 of this title, to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 2158 of title 50, Appendix.

(Pub. L. 107–296, title II, § 214, Nov. 25, 2002, 116 Stat. 2152; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The Critical Infrastructure Information Act of 2002, referred to in subsec. (a)(2)(A), is subtitle B (§ 211 et seq.) of title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2150, which is classified generally to this part. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (a)(1)(D)(ii)(II). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 134. No private right of action

Nothing in this part may be construed to create a private right of action for enforcement of any provision of this chapter.

(Pub. L. 107–296, title II, § 215, Nov. 25, 2002, 116 Stat. 2155.)

PART C—INFORMATION SECURITY

§ 141. Procedures for sharing information

The Secretary shall establish procedures on the use of information shared under this subchapter that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(Pub. L. 107–296, title II, § 221, Nov. 25, 2002, 116 Stat. 2155.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

§ 142. Privacy officer

The Secretary shall appoint a senior official in the Department, who shall report directly to the Secretary, to assume primary responsibility for privacy policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974 [5 U.S.C. 552a];

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected;

(5) coordinating with the Officer for Civil Rights and Civil Liberties to ensure that—

(A) programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

(B) Congress receives appropriate reports on such programs, policies, and procedures; and

(6) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974 [5 U.S.C. 552a], internal controls, and other matters.

(Pub. L. 107–296, title II, § 222, Nov. 25, 2002, 116 Stat. 2155; Pub. L. 108–458, title VIII, § 8305, Dec. 17, 2004, 118 Stat. 3868.)

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in pars. (2) and (6), is Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 552a of Title 5 and Tables.

AMENDMENTS

2004—Pub. L. 108–458, § 8305(1), inserted '', who shall report directly to the Secretary,'' after ''in the Department'' in introductory provisions.

Pars. (5), (6). Pub. L. 108–458, § 8305(2)–(4), added par. (5) and redesignated former par. (5) as (6).

§ 143. Enhancement of non-Federal cybersecurity

In carrying out the responsibilities under section 121 of this title, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

(Pub. L. 107–296, title II, § 223, Nov. 25, 2002, 116 Stat. 2156.)

§ 144. NET Guard

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as ''NET Guard'', comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

(Pub. L. 107–296, title II, § 224, Nov. 25, 2002, 116 Stat. 2156.)

§ 145. Cyber Security Enhancement Act of 2002

(a) Short title

This section may be cited as the ''Cyber Security Enhancement Act of 2002''.

(b) Amendment of sentencing guidelines relating to certain computer crimes

(1) Directive to the United States Sentencing Commission

Pursuant to its authority under section 994(p) of title 28 and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18.

(2) Requirements

In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18.

(c) Study and report on computer crimes

Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18.

(d) Emergency disclosure exception

(1) Omitted

(2) Reporting of disclosures

A government entity that receives a disclosure under section 2702(b) of title 18 shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after November 25, 2002.

(Pub. L. 107–296, title II, § 225, Nov. 25, 2002, 116 Stat. 2156.)

CODIFICATION

Section is comprised of section 225 of Pub. L. 107–296. Subsecs. (d)(1) and (e) to (j) of section 225 of Pub. L. 107–296 amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure.

PART D—OFFICE OF SCIENCE AND TECHNOLOGY

§ 161. Establishment of Office; Director

(a) Establishment

(1) In general

There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this subchapter referred to as the ''Office'').

(2) Authority

The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be established within the National Institute of Justice.

(b) Director

The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

(Pub. L. 107–296, title II, § 231, Nov. 25, 2002, 116 Stat. 2159.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1), was in the original ''this title'', meaning title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

§ 162. Mission of Office; duties

(a) Mission

The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) Duties

In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

(c) Competition required

Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

(d) Information from Federal agencies

Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

(e) Publications

Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

(f) Transfer of funds

The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section: *Provided*, That any such transfer or provision of funding shall be carried out in accordance with section 605 of Public Law 107–77.

(g) Annual report

The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director's assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

(Pub. L. 107–296, title II, §232, Nov. 25, 2002, 116 Stat. 2159; Pub. L. 108–7, div. L, §103(1), Feb. 20, 2003, 117 Stat. 529.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b)(2), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The National Technology Transfer and Advancement Act of 1995, referred to in subsec. (b)(3), (4), is Pub. L. 104–113, Mar. 7, 1996, 110 Stat. 775, as amended. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 3701 of Title 15, Commerce and Trade, and Tables.

Section 605 of Public Law 107–77, referred to in subsec. (f), is section 605 of Pub. L. 107–77, title VI, Nov. 28, 2001, 115 Stat. 798, which is not classified to the Code.

AMENDMENTS

2003—Subsec. (f). Pub. L. 108–7 inserted before period at end ": *Provided*, That any such transfer or provision of funding shall be carried out in accordance with section 605 of Public Law 107–77".

§ 163. Definition of law enforcement technology

For the purposes of this subchapter, the term "law enforcement technology" includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

(Pub. L. 107–296, title II, §233, Nov. 25, 2002, 116 Stat. 2161.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

§ 164. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions

(a) Authority to transfer functions

The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(b) Transfer of personnel and assets

With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office: *Provided*, That any such transfer shall be carried out in accordance with section 605 of Public Law 107–77.

(c) Report on implementation

Not later than 1 year after November 25, 2002, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this subchapter. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to

carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

(Pub. L. 107–296, title II, § 234, Nov. 25, 2002, 116 Stat. 2161; Pub. L. 108–7, div. L, § 103(2), Feb. 20, 2003, 117 Stat. 529.)

REFERENCES IN TEXT

Section 605 of Public Law 107–77, referred to in subsec. (b), is section 605 of Pub. L. 107–77, title VI, Nov. 28, 2001, 115 Stat. 798, which is not classified to the Code.

This subchapter, referred to in subsec. (c), was in the original ''this title'', meaning title II of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2145, which enacted this subchapter, amended sections 1030, 2511, 2512, 2520, 2701 to 2703, and 3125 of Title 18, Crimes and Criminal Procedure, sections 3712 and 3722 of Title 42, The Public Health and Welfare, and section 401a of Title 50, War and National Defense, and enacted provisions set out as a note under section 101 of this title and listed in a Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines Relating to Specific Offenses table set out under section 994 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–7 inserted before period at end '': *Provided*, That any such transfer shall be carried out in accordance with section 605 of Public Law 107–77''.

§ 165. National Law Enforcement and Corrections Technology Centers

(a) In general

The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as ''Centers'') and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) Purpose of Centers

The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) Annual meeting

Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) Report

Not later than 12 months after November 25, 2002, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

(Pub. L. 107–296, title II, § 235, Nov. 25, 2002, 116 Stat. 2162.)

SUBCHAPTER III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

§ 181. Under Secretary for Science and Technology

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

(Pub. L. 107–296, title III, § 301, Nov. 25, 2002, 116 Stat. 2163.)

§ 182. Responsibilities and authorities of the Under Secretary for Science and Technology

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological,,[1] and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—

(A) preventing the importation of chemical, biological,,[1] and related weapons and material; and

(B) detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to Federal, State, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 8401 of title 7;

[1] So in original.